

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
ACME Television Licenses of Illinois, LLC	)	Facility I.D. No. 16363
Licensee of Station WBUI(TV)	)	NAL/Acct. No. 0741420005
Decatur, Illinois	)	FRN: 0000013383

**NOTICE OF APPARENT  
LIABILITY FOR FORFEITURE**

**Adopted: April 26, 2007**

**Released: April 30, 2007**

By the Chief, Video Division, Media Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),<sup>1</sup> by the Chief, Video Division, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,<sup>2</sup> we find that ACME Television Licenses of Illinois, LLC (the “Licensee”), licensee of Station WBUI(TV), Decatur, Illinois (the “Station”), apparently willfully and repeatedly violated Section 73.670 of the Rules, by failing to comply with the limits on commercial matter in children’s programming.<sup>3</sup> Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of fifteen thousand dollars (\$15,000).

**II. BACKGROUND**

2. In the Children’s Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. §§ 303a, 303b and 394, Congress directed the Commission to adopt rules, *inter alia*, limiting the number of minutes of commercial matter that television stations may air during children’s programming, and to consider in its review of television license renewal applications the extent to which the licensee has complied with such commercial limits. Pursuant to this statutory mandate, the Commission adopted Section 73.670 of the Rules, which limits the amount of commercial matter which may be aired during children’s programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. The Commission also stated that a program associated with a product, in which commercials for that product are aired, would cause the entire program to be counted as commercial time (a “program-length commercial”).<sup>4</sup>

3. On August 1, 2005, the Licensee filed its license renewal application (FCC Form 303-S) for Station WBUI(TV) (the “Application”) (File No. BRCT-20050801AGG). In response to Section IV, Question 5 of the Application, the Licensee stated that, during the previous license term, it failed to

<sup>1</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

<sup>2</sup> See 47 C.F.R. § 0.283.

<sup>3</sup> See 47 C.F.R. § 73.670.

<sup>4</sup> *Children’s Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991).

comply with the limits on commercial matter in children's programming specified in Section 73.670 of the Rules. In Exhibit 19, the Licensee indicated that, between September 24, 2002, and January 31, 2004, it violated the children's television commercial limits on nine occasions. Of these overages, four were one minute and 30 seconds in duration, one was two minutes in duration, and three were program-length commercials. The Licensee stated that one of the conventional overages occurred when the facility that assembles commercial content into all WB Network programming and provides the uplink services for dissemination to the Station incorrectly inserted commercial content into a children's program resulting in an overage of one minute and 30 seconds in duration. The Licensee attributed the four remaining conventional overages to human error. With respect to the program-length commercials, the Licensee indicated that on three occasions, a commercial announcement featuring "Yu-Gi-Oh" trading cards aired during the "Yu-Gi-Oh!" cartoon program. The Licensee maintained that it took corrective actions to prevent future violations.

4. Finally, the Licensee stated that, on September 24, 2002, the Station aired a WB Television Network commercial for the Gameboy Advance E-Reader, during the "Pokemon" program. According to the Licensee's description, the commercial contained "fleeting partial images of three Pokemon game cards" displayed as three cards within a six card fan arrangement. The Licensee stated that the partially hidden "Pokemon" cards were visible for approximately 1.04 seconds and that "Pokemon" is not mentioned in the audio of the commercial. In addition, the Licensee stated that only the letters "MON" were visible and that no "Pokemon" characters were discernible. The Licensee asserted that this incident differs from the instances in which the Commission has concluded that a program constitutes a program-length commercial. Specifically, the Licensee argued that in previous cases, the commercials depicted characters for a longer period of time than the "Pokemon" game cards were shown in this case. Therefore, contended the Licensee, the characters in prior cases were more recognizable than the "Pokemon" cards in this case. According to the Licensee, the "Pokemon" episode in which the Gameboy Advance E-Reader commercial appeared did not contain any "Pokemon" game cards. The Licensee argued that, since no "Pokemon" characters were discernible and only the letters "MON" were visible, children would not perceive any linkage between the "Pokemon" program and the Gameboy Advance E-Reader commercial. Thus, the licensee opined that this incident does not constitute a program-length commercial.

### III. DISCUSSION

5. Station WBUI(TV)'s record during the last license term of exceeding the Commission's commercial limits on nine occasions constitutes an apparent willful and repeated violation of Section 73.670 of the Rules. We note that four of the overages were program-length commercials. With respect to the Station's broadcast of the commercial for the Gameboy Advance E-Reader, although the Licensee asserted that the "Pokemon" game cards appeared for 1.04 seconds during the commercial, it is well established that the determination as to whether a particular program is a program-length commercial is not dependent on the duration of the appearance of the program-related product in the commercial announcement. The Commission has stated on numerous occasions that, where a commercial announcement includes a product related to the program in which the commercial is broadcast, the program is a program-length commercial regardless of the duration of the appearance of the program-related product in the commercial.<sup>5</sup> In this case, the Licensee has acknowledged that the commercial contained images of three "Pokemon" game cards. We believe that, in the context of the cognitive abilities of young children, there is the potential for confusion between the Gameboy commercial and the

<sup>5</sup> *UTV of San Francisco, Inc. (KBHK-TV)*, 10 FCC Rcd 10986, 10988 (1995); *see also WPIX, Inc.*, 14 FCC Rcd 9077 (MMB 1999) (commercial for "Spirit of Mickey" home video showing brief image of Donald Duck on cover of video aired during "Quack Pack" program); *Act III Broadcasting License Corp. (WUTV(TV))*, 10 FCC Rcd 4957 (1995), *aff'd*, 13 FCC Rcd 10099 (MMB 1997) (commercial for a fast food restaurant promoting a trip to Disney World as a contest prize contained a brief image of Goofy and aired during the program "Goof Troop").

“Pokemon” program regardless whether any “Pokemon” character is depicted given the images of “Pokemon” game cards contained in the commercial and the consequent likelihood that children may associate it with the program.

6. Congress was particularly concerned about program-length commercials because young children often have difficulty distinguishing between commercials and programs.<sup>6</sup> Given this congressional concern, the Commission made it clear that program-length commercials, by their very nature, are extremely serious violations of the children’s television commercial limits, stating that the program-length commercial policy “directly addresses a fundamental regulatory concern, that children who have difficulty enough distinguishing program content from unrelated commercial matter, not be all the more confused by a show that interweaves program content and commercial matter.”<sup>7</sup>

7. The number and magnitude of overages at issue here mean that children have been subjected to commercial matter greatly in excess of the limits contemplated by Congress when it enacted the Children’s Television Act of 1990.<sup>8</sup> Although the Licensee indicated that four of the conventional overages resulted from human error, this does not mitigate or excuse the violations. In this regard, the Commission has repeatedly rejected human error and inadvertence as a basis for excusing violations of the children’s television commercial limits.<sup>9</sup> With respect to the reasons given for one conventional overage and one program-length commercial, the fact that they resulted from errors which occurred in the programming supplied by the Station’s television network or were inserted into the program by the Station’s television network does not relieve it of responsibility for the violations. The Commission has consistently held that a licensee’s reliance on a program’s source or producer for compliance with our children’s television rules and policies will not excuse or mitigate violations which do occur.<sup>10</sup> Furthermore, the Licensee’s implementation of policies to prevent subsequent violations of the Commission’s children’s television rules and policies does not relieve the Licensee of liability for violations which have occurred.<sup>11</sup>

8. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>12</sup> Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>13</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both

<sup>6</sup> S. Rep. No. 227, 101<sup>st</sup> Cong., 1<sup>st</sup> Sess. 24 (1989).

<sup>7</sup> *Children’s Television Programming*, 6 FCC Rcd at 2118.

<sup>8</sup> *Id.* at 2117-18.

<sup>9</sup> See, e.g., *LeSea Broadcasting Corp. (WHKE-TV)*, 10 FCC Rcd 4977 (MMB 1995); *Buffalo Management Enterprises Corp. (WIVB-TV)*, 10 FCC Rcd 4959 (MMB 1995); *Act III Broadcasting License Corp.*, *supra*; *Ramar Communications, Inc. (KJTV-TV)*, 9 FCC Rcd 1831 (MMB 1994).

<sup>10</sup> See, e.g., *Max Television of Syracuse, L.P. (WSYT-TV)*, 10 FCC Rcd 8905 (MMB 1995); *Mt. Mansfield Television, Inc. (WCAX-TV)*, 10 FCC Rcd 8797 (MMB 1995); *Boston Celtics Broadcasting Limited Partnership (WFXT-TV)*, 10 FCC Rcd 6686 (MMB 1995).

<sup>11</sup> See, e.g., *WHP Television, L.P. (WHP-TV)*, 10 FCC Rcd 4979, 4980 (MMB 1995); *Mountain States Broadcasting, Inc. (KMSB-TV)*, 9 FCC Rcd 2545, 2546 (MMB 1994); *R&R Media Corporation (WTWS-TV)*, 9 FCC Rcd 1715, 1716 (MMB 1994); *KEVN, Inc. (KEVN-TV)*, 8 FCC Rcd 5077, 5078 (MMB 1993); *International Broadcasting Corp.*, 19 FCC 2d 793, 794 (1969).

<sup>12</sup> 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

<sup>13</sup> 47 U.S.C. § 312(f)(1).

Sections 312 and 503(b) of the Act,<sup>14</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>15</sup> Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”<sup>16</sup>

9. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$8,000 for violation of Section 73.670.<sup>17</sup> In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>18</sup>

10. In this case, an upward adjustment is justified in light of the number and nature of the commercial overages. Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of \$15,000 for its apparent willful and repeated violation of Section 73.670.

#### IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission’s Rules, that ACME Television Licenses of Illinois, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of fifteen thousand dollars (\$15,000) for its apparent willful and repeated violation of Section 73.670 of the Commission’s Rules.

12. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission’s Rules, that, within thirty (30) days of the release date of this *NAL*, ACME Television Licenses of Illinois, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

14. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington D.C. 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

15. The Commission will not consider reducing or canceling a forfeiture in response to a

<sup>14</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>15</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>16</sup> 47 U.S.C. § 312(f)(2).

<sup>17</sup> See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (“*Forfeiture Policy Statement*”), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

<sup>18</sup> 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the respondent’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>19</sup>

17. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to ACME Television Licenses of Illinois, LLC, 2101 East Fourth Street, Suite 202A, Santa Ana, California 92705, and to Rick Ervin, Acme Television, LLC, 2101 East Fourth Street, Suite 202, Santa Ana, California 84107.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>19</sup> See 47 C.F.R. § 1.1914.